

Application No. 10/795,830  
Amendment dated March 28, 2007  
Reply to Office Action dated November 30, 2006

### **REMARKS**

Claims 2-4, 8-19, 21, 23, and 25 are pending in the Application. Claims 5-7, 20, 22, 24, and 26 are hereby withdrawn from consideration and Applicants reserve the right to file one or more divisional patent applications taking up these claims. The Examiner rejected Claims 2-4, 8-13, 15-19, 21, 23, and 25. Claim 14 has been indicated as allowable.

### **Specification**

Applicants have amended the Abstract to obviate the objection thereto. Applicants respectfully submit that no new matter has been added.

Pursuant to a Petition to Accept an Unintentionally Delayed Claim Under 35 U.S.C. § 120 filed concurrently to claim priority to copending U.S. Patent Application Serial No. 10/325,088, Applicants have amended the specification to include a reference to U.S. Patent Application Serial No. 10/325,088, filed December 20, 2002, entitled SURGICAL INSTRUMENT AND METHOD OF POSITIONING SAME.

### **Claim Rejections – 35 U.S.C. § 102**

The Examiner rejected Claims 2-4, 8-13, 15-19, 21, 23, and 25 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0122305 to Grimm et al. (hereinafter "Grimm et al. '305").

In view of the Petition to Accept an Unintentionally Delayed Claim Under 35 U.S.C. § 120 filed concurrently to claim priority to copending U.S. Patent Application Serial No. 10/325,088, i.e., Grimm et al. '305, Applicants respectfully submit that Grimm et al. '305 is not a proper prior art reference under 35 U.S.C. § 102(e), and Applicants respectfully request the Examiner to withdraw the rejection of Claims 2-4, 8-13, 15-19, 21, 23, and 25 under 35 U.S.C. § 102(e).

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## Allowable Subject Matter

Applicants appreciate the indication of allowable subject matter in Claim 14. Applicants respectfully submit that Claim 14 is patentable in its current form for at least the reasons advanced above.

In the event Applicants have overlooked the need for an extension of time or payment of fee, Applicants hereby petition therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels LLP.

Should the Examiner have any questions regarding any of the above, the Examiner is respectfully requested to telephone the undersigned at 260-424-8000.

Respectfully submitted,

  
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**CERTIFICATE UNDER 37 C.F.R. 1.8(B)**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the United States Patent and Trademark Office to the attention of: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on March 28, 2007.

Jason A. Houser, Reg. No. 53,038  
Name of Registered Representative

A-21

March 28, 2007